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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/945,204	08/31/2001	David J. Domingues	PIL0060/US	4507

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Daniel C. Schulte
Kagan Binder, PLLC
Maple Island Building, Suite 200
221 Main Street North
Stillwater, MN 55082

EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 11/06/2002

5

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/945,204

Applicant(s)

Domingues

Examiner
Lien Tran

Art Unit
1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Aug 31, 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some* c) ☐ None of:

- ☐ Certified copies of the priority documents have been received.
- ☐ Certified copies of the priority documents have been received in Application No. _____.
- ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) ☐ The translation of the foreign language provisional application has been received.

- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 3,4
- ☐ Interview Summary (PTO-413) Paper No(s). _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other:

Art Unit: 1761

1. Claims 1-18,23 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is vague and indefinite. It is not clear how the barrier material is structurally related to the acid ingredient and the basic ingredient. If the barrier material is just included in the dough and is not structurally related to the active ingredients, it is not seen how the barrier function as claimed.

In claim 3, is the barrier material the same one as that recited in claim 1; if so, it is suggested applicant uses “ the” or “ said” to give proper antecedent basis and to make the claim clearer.

In claim 5, the language “ relatively insoluble” is indefinite because it is not known how insoluble is relatively insoluble. Line 3, “ the aqueous phase” is unclear because the claims have not set forth an aqueous phase of the dough. What does applicant mean by the aqueous phase of the dough? A dough is solid material and it does not have different phases.

Claim 10 is vague and indefinite. What does applicant mean by a water phase of the dough; dough is a solid ingredient. What would be considered as the water phase of the dough?

In claim 18, what does applicant mean by “ fat-type”?

In claim 23, the hand written insertion is not clear; does applicant mean to say “ synthetic analog of palm oil” or “synthetic analog of palm kernel oil”. Palm kernel oil is recited two times if the insertion is meant to say “ synthetic analog of palm oil”.

Art Unit: 1761

Claim 27 has the same problem as claim 1; also, what does applicant mean by “ fat-type”?

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 20,25 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Atwell et al.

Atwell et al disclose a refrigerated dough product. The dough product has a raw dough specific volume of at least about 1.5cc/g. The chemical leavening agents are listed on column 5 lines 15-37. Either or both of the leavening acid and leavening base may be encapsulated, so that the leavening reaction does not substantially take place until the proper conditions have been achieved in the dough such as temperature or moisture. The degree of leavening may range from leavening required to make products with low baked specific volumes for example less than 2cc/g to product with high baked specific volumes greater than or equal to about 5cc/g. (See columns 3 and 5)

Atwell et al disclose the limitations of the above cited claims. Since the active ingredients are encapsulated, it is inherent they are coated by barrier material.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 1761

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459

(1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1-19,21-24,27-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Atwell et al in view of Katz et al.

The teaching of Atwell et al is described above.

Atwell et al does not disclose the encapsulating material for the leavening agents, the amount of leavening agent and the baking temperature as claimed.

Katz et al disclose a leavening system in which the leavening agents is coated with a partially hydrogenated palm oil. (See col. 3 lines 1-25)

It would have been obvious to one skilled in the art to use the vegetable oil taught by Katz et al to encapsulate the leavening agents of Atwell et al because Katz et al teach that the oil is used to coat leavening agents. When the leavening agents are coated with palm oil, they will

Art Unit: 1761

have the characteristics as claimed because the same type of coating material is used. It would also have been obvious to use varying amount of leavening agent depending on the type of dough product and the volume desired for such product. Atwell et al teach the quantity of leavening agents is selected to provide the desired degree of leavening in the dough in order to obtain products ranging from low baked specific volumes to high baked specific volumes. The baking temperature varies with the type of dough and the time of baking. It would have been obvious to use low temperature for longer period of time or vice versa. Determining the appropriate baking temperature, after considering parameters such as the type of dough, the type of oven, the baking time and the degree of cook desired, is within the skill of one in the art.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Laughlin et al disclose method of preparing dough.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

October 29, 2002


LIEN TRAN
PRIMARY EXAMINER
